

# Order

Entered: September 14, 2004

Michigan Supreme Court  
Lansing, Michigan

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

ADM File No. 2004-40

Proposed Amendment of  
Rule 3.215 of the  
Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.215 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted on the Court's website at [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

## Rule 3.215 Domestic Relations Referees

- (A) Qualifications of Referees. A referee appointed ~~by the chief judge of the circuit pursuant to MCL 552.507(1) must be a member in good standing of the State Bar of Michigan. A nonattorney friend of the court ~~who is not a lawyer, but who is was serving as a referee at the time of adoption of this rule when this rule took effect on May 1, 1993, may continue to serve. A successor must meet the qualifications established by this rule.~~~~
- (B) Referrals to the Referee.
- (1) The chief judge may, ~~refer motions of a particular kind to a referee, by administrative order.~~ by administrative order, direct that specified types of domestic relations motions be heard initially by a referee.
  - (2) To the extent allowed by law, the judge to whom ~~an~~ a domestic relations action is assigned may refer other motions in that action to a referee

- (a) on written stipulation of the parties,
    - (b) on ~~written~~ a party's motion ~~by a party~~, or
    - (c) on the judge's own initiative.
  - (3) In a domestic relations matter, the judge to whom an action is assigned, or the chief judge by administrative order, may authorize referees to conduct settlement conferences and, subject to judicial review, schedule conferences.
- (C) Scheduling of the Referee Hearing.
- (1) Within 14 days after receiving a motion referred under subrule (B)(1) or a ~~referral under subrule (B)(2)~~, the referee must serve ~~schedule the matter for hearing~~.
  - (2) ~~The referee must serve a notice of hearing on the attorneys for the parties, or the parties if they are not represented by counsel~~ a notice scheduling a referee hearing. The notice of hearing must clearly state that the matter will be heard by a referee.
  - (2) The referee may adjourn a hearing for good cause without preparing a recommendation for an order, except that if the adjournment is subject to any terms or conditions, the referee may only prepare a recommendation for an adjournment order to be signed by a judge.
- (D) Conduct of Referee Hearings.
- (1) The Michigan Rules of Evidence apply to referee hearings.
  - (2) A referee must provide the parties with notice of the right to request a judicial hearing by giving
    - (a) oral notice during the hearing, and
    - (b) written notice in the recommendation for an order.
  - (3) Testimony must be taken in person, except that, for good cause, a referee may allow testimony to be taken by telephone or other electronically reliable means, ~~in extraordinary circumstances~~.
  - (4) An electronic or stenographic record must be kept of all hearings.
- (E) Posthearing Procedures.

- (1) Within 21 days after a hearing, ~~except for a hearing on income withholding,~~ the referee must either make a statement of findings on the record or submit a written, signed report containing a summary of testimony and a statement of findings. In either event, the referee must make a recommendation for an order and arrange for it to be submitted to the court and the attorneys for the parties, or the parties if they are not represented by counsel. A proof of service must be filed with the court. If the recommendation for an order is approved by the court and no written objection is filed with the court clerk within 21 days after the recommendation is served on the attorneys for the parties, or the parties if they are not represented by counsel, the order will take effect.
- (2) If the hearing concerns income withholding, the referee must arrange for a recommended order to be submitted to the court forthwith. If the recommended order is approved by the court, it must be given immediate effect pursuant to MCL 552.607(4).
- (3) A party may obtain a judicial hearing on any matter that has been the subject of a referee hearing by filing
  - (a) ~~a written objection and notice of hearing within 14 days after the referee's recommended order is served on the attorneys for the parties, or the parties if they are not represented by counsel, if the order is for income withholding, or~~
  - (b) a written objection and notice of hearing within 21 days after the referee's recommendation for an order is served on the attorneys for the parties, or the parties if they are not represented by counsel, if the order concerns any other matter. The objection must include a clear and concise statement of the specific findings of fact to which the objection is made.
- (4) The party who requests a judicial hearing must serve the objection and notice of hearing on the opposing party or counsel in the manner provided in MCR 2.119(C).
- (5) A circuit court may, by local administrative order, establish additional methods for obtaining a judicial hearing. The referee's recommendation for an order must give prominent notice of all the available methods for obtaining a judicial hearing.
- (6) The court may hear a party's objection to the referee's recommendation for an order on the same day as the referee hearing, provided that the notice scheduling the referee hearing advises the parties that a same-day

judicial hearing will be available and the parties have the option of refusing a same-day hearing if they have not yet decided whether they will object to the referee's recommendation for an order.

- (7) The parties may waive their right to object to the referee's recommendation for an order by consenting in writing to the immediate entry of the recommended order.

(F) Judicial Hearings.

- (1) The judicial hearing must be held within 21 days after the written objection is filed, unless the time is extended by the court for good cause.
- (2) Subject to subrule (F)(3), the decision after a judicial hearing may be:
  - (a) a new decision based entirely on the record of a referee hearing, including any memoranda, recommendations, or proposed orders by the referee;
  - (b) a new decision based only on evidence presented at the judicial hearing; or
  - (c) a new decision based on the record of the referee hearing as supplemented by evidence that was not introduced at the referee hearing.
- (3) The parties may present to the court the same evidence that was presented at the referee hearing and also evidence that could not have been presented at the referee hearing; however, the court may:
  - (a) exclude evidence that was not offered at the referee hearing, provided the party had an opportunity to offer the evidence at the referee hearing and failed to do so;
  - (b) use a referee's finding to establish a fact when no objection to that finding has been filed;
  - (c) make the payment of costs or attorney fees a condition for offering evidence that the party could have offered at the referee hearing; and
  - (d) impose any other reasonable restrictions and conditions to conserve the resources of the parties and the court.
- (2) ~~If both parties consent, the judicial hearing may be based solely on the record of~~

~~the referee hearing.~~

- (34) If the court determines that an objection is frivolous or has been interposed for the purpose of delay, the court may assess reasonable costs and attorney fees.

(G) Interim Effect of Referee's Recommendation for an Order.

- (1) Except as limited by subrule (G)(2), the court may, by an administrative order or by an order in the case, provide that, following an objection to the referee's recommended order, the referee's recommended order will take effect on an interim basis pending entry of a final order by the court. The court must provide notice that the referee's recommended order will be an interim order by including that notice under a separate heading in the referee's recommended order, or by requiring service of a separate court order in the case within 3 days.
- (2) The court may not give interim effect to a referee's recommendation for any of the following orders:
- (a) an order for incarceration;
  - (b) an order for forfeiture of any property;
  - (c) an order imposing costs, fines, or other sanctions; or
  - (d) any order that would render subsequent judicial consideration of the matter moot.

Staff Comment: This proposed amendment would implement 2004 PA 210, which redefines "de novo hearings" and allows trial courts to give interim effect to a referee's recommended order pending a hearing de novo.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2005, at P.O. Box 30052, Lansing, MI 48909, or MSC\_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2004-40. Your comments and the comments of others will be posted at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

*September 14, 2004* *Corbin R. Davis*

Clerk